

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

Crl.MC.No. 2943 of 2007()

CRA.469/2005 of ADDITIONAL SESSIONS COURT(AD HOC II)
CC.242/2007 of JUDL. MAGISTRATE OF FIRST CLASS COURT, THALASSERY
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PETITIONER: DEFACTO COMPLAINANT:

K.P. SHAMEENA, D/O. MAMMU,
AGED 30 YEARS, NO OCCUPATION, RESIDING AT
K.P. HOUSE, KOROTH ROAD, AZHIYOOR P.O.,VADAKARA,
KOZHIKODE DISTRICT.

BY ADV. SRI.R.SURENDRAN

RESPONDENTS: STATE & ACCUSED:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. P. ISMAIL, S/O.LATE ASSINAR,
SAINABA MANZIL, FRENCH PETTYPALAM, P.O.NEW MAHE,
THALASSERY, KANNUR DISTRICT.
3. P. SAINABA, W/O. LATE ASSINAR,
SAINABA MANZIL, FRENCH PETTYPALAM, P.O.NEW MAHE,
THALASSERY, KANNUR DISTRICT.
4. K.P. JAMEELA, D/O. LATE ASSINAR,
SAINABA MANZIL, FRENCH PETTYPALAM, P.O.NEW MAHE,
THALASSERY, KANNUR DISTRICT.
5. SHERIN ALIAS SHEHAR BANU, D/O. ASMA,
SAINABA MANZIL, FRENCH PETTYPALAM, P.O.NEW MAHE,
THALASSERY, KANNUR DISTRICT.

BY PUBLIC PROSECUTOR ADV.SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J
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CrI.M.C. No. 2943 Of 2007
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Dated this the 20th day of September, 2007

ORDER

The petitioner is the de facto complainant in a prosecution initiated under Sec.498A. Respondents 2 to 5 are the accused in the said crime. The crime was registered on the basis of a private complaint filed by the petitioner which was referred by the learned Magistrate to the Police under Sec.156(3) Cr.P.C. Cognizance has been taken. The matter is pending before the learned Magistrate. The accused persons had come before this Court to quash the proceedings against them. But by order dated 20.8.03 in Cr.M.C.4146/2001, that petition was dismissed. The 3rd respondent has already been found guilty, convicted and sentenced. The case against the 2nd, 4th and 5th respondents alone is pending.

2. The petitioner has now filed this application to quash the proceedings initiated by her against the respondents 2 to 5 accused, invoking the powers under Section 482 Cr.P.C. The parties have settled their disputes amicably. The marital tie has been dissolved. There is no dispute between the parties now. In these circumstances, the petitioner prays that the proceedings against the respondents 2-5/accused – her husband and his relatives, on the basis of her

complaint, may be quashed invoking powers under Sec.482 Cr.P.C as explained in the decision in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386]. The learned counsel for the petitioner confirms and asserts that the petitioner is the de facto complainant in the crime/case. He asserts that the petitioner and the respondents have settled their disputes.

3. The learned Public Prosecutor has no objection and I am satisfied that this is an eminently fit case where the dictum in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386] can be invoked in the interests of justice. The interests of justice may at times transcend the interest of mere law. I am satisfied that the prayer of the petitioner and respondents 2,4 & 5 can be accepted notwithstanding the fact that the offence under Section 498A is not declared to be compoundable under section 320 Cr.P.C.

4. In the result, this Criminal Miscellaneous Case is allowed in part. C.C.No. 242 of 2007 pending against respondents 2,4 and 5 is hereby quashed. It is submitted that 3rd respondent has already faced the trial and has been found guilty and convicted. She will of course have to seek the relief of commutation to avoid the sentence against her.

(R.BASANT, JUDGE)

